

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7687 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHREE RAVIDARSHAN COOP HSG SOCLTD

Versus

PRAFULLAKUMAR THAKAR

Appearance:

MR SB VAKIL for Petitioners

MS. HARSHA DEVANI, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /09/1999

C.A.V. JUDGEMENT

The prayer of the petitioners in this petition is for setting aside the order dated 30.9.1989 annexure-B passed by the Collector, Surat, in suo motu case No. 64 of 1989 and revisional order dated 23.3.1995 Annexure-A passed by the respondent No. 1 in exercise of revisional power under Section 211 of the Bombay Land Revenue Code.

2. The brief facts giving rise to this writ petition

are as under:

The petitioner Society is a registered society under the Gujarat Co-operative Societies Act, 1961. One Bhagabhai Nathabhai was a debtor of the creditor-society to the tune of Rs. 264.85 ps. for which Mohanbhai Vithalbhai, owner of the land was guarantor. For recovery of the said debt of the creditor society, the Special Recovery Officer, Surat, held public auction on 14.4.1981 in which the petitioner society was the highest bidder at Rs. 1,80,000/-. Vide order dated 18.5.1981 the Special Recovery Officer, Surat, accepted the highest bid of the petitioner and confirmed the sale. Pursuant thereto mutation entry dated 23.5.1981 was made in the revenue records vide Annexure-C. The petitioner society was thus a bona fide purchaser for value without any notice of any irregularity or inaccuracy in the sale proceedings. The petitioner society was put in possession of the land so purchased in the auction conducted by the Special Recovery Officer, Surat. The petitioner society thereafter obtained permission from gram panchayat to raise construction which was sanctioned vide Resolution dated 24.11.1981. 180 residential units including bungalows were constructed thereafter by the petitioner over this land. The Collector, Surat, received from the competent authority under Urban Land Ceiling Act, a letter dated 22.9.1989 that application under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976, received from Mohanbhai Vithalbhai was pending and was not disposed of. Thereafter, the Collector vide his order dated 30.9.1989 Annexure-B set aside the auction sale in favour of the petitioner society and directed the creditor-society to refund to the petitioner society the amount paid to the creditor-society. The sale was set aside and entry in the record was ordered to be expunged. In so doing the Collector did not issue any notice to the petitioner society nor opportunity of hearing was given to the petitioner. It was thus an order of the Collector violating the principles of natural justice. The petitioner society came to know the Collector's order dated 16.11.1989 in the last week of June, 1994. Thereafter, application for copy was moved. Copy was supplied on 14.7.1994. Appeal was filed on 6.8.1994 by the petitioner under Section 203 of the Bombay Land Revenue Code before the respondent No. 1. The appeal of the petitioner was dismissed on 23.3.1995. Hence this writ petition.

3. No counter affidavit has been filed by the respondents. As such, the learned counsel for the

petitioner and the learned A.G.P. were heard and the record was examined so also the impugned orders. The main contentions of the learned counsel for the petitioners were as under:

- (i) That the Collector could exercise suo motu revisional power under Section 211 of the Bombay Land Revenue Code but this power should have been exercised within a reasonable time and not after a lapse of about eight years.
- (ii) that no notice was issued by the collector for exercising suo motu power to the petitioner.
- (iii) that no opportunity of hearing was given to the petitioner against the proposed exercise of suo motu powers under Section 211 of the Bombay Land Revenue Code.
- (iv) that the persons likely to be affected by the impugned orders under Section 211, namely, the petitioner society and the persons who were allotted and handed over units constructed over the land in suit were not given opportunity of hearing.
- (v) that the subsequent events which occurred during these eight years were not taken into consideration by the Collector as well as by the respondent No. 1.
- (vi) that no additional evidence could be taken under Section 211 of the Bombay Land Revenue Code.
- (vii) that the petitioner was a bona fide purchaser for value without any notice of any irregularity in the auction sale.
- (viii) that reasoning for setting aside the auction sale and mutation entries pursuant thereto on ground of inadequacy of price or want of permission under the Urban Land Ceiling Act are unfounded,
- (ix) that the owner of the land was not guarantor of the principal debtor is irrelevant consideration for quashing the order of the Special Recovery Officer.
- (x) that the order under Section 211 of the Bombay Land Revenue Code was without jurisdiction.

5. I have given my thoughtful consideration to these arguments. Coming to the first point it is clear from Section 211 of the Bombay Land Revenue Code that the revisional power under this Section could be exercised by the State Government and certain revenue officers not below the rank of Assistant / Deputy Collector or Superintendent of Survey as the Collector of the District is empowered to exercise revisional power under this Section. In exercise of this power the Collector can modify, annul or reverse the order which is taken for consideration in suo motu exercise of revisional power under the said section. The question is what should be the time under which the revisional power is to be exercised by the Collector. Section 211 of the Code does not prescribe any period of limitation but that does not mean that the power under Section 211 could be exercised at any time at the sweetwill of the revising authority. In the instant case the auction was conducted by the Special Recovery Officer on 18.5.1981 and mutation entry was made pursuant thereto on 23.5.1981. As against this, the revisional power was exercised by the Collector and the order of the Special Recovery Officer was set aside on 30.9.1989 i.e. practically after slightly more than eight years. Whatever may be the reason for exercising suo motu power after such long delay, no explanation has been offered by filing counter affidavit as to what was the occasion for exercising this power after such a long period.

6. The leading case on limitation for exercise of such power is the case of State of Gujarat Vs. Raghav Natha (1969) 10 G.L.R. 992. The apex court in this case observed with reference to Section 211 of the Code that it is true that there is no period of limitation prescribed under Section 211 of the Bombay Land Revenue Code but it is plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and nature of the order. The apex court was considering provisions of Section 65 and Section 211 of the Code and in that connection it further observed that Section 65 itself indicates the length of reasonable time within which the Commissioner must act under Section 211. Section 65 shows that the period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter was so urgent that the permission shall be deemed to have been granted. Reading Section 211 and Section 65 it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. The Commissioner in such matters should also indicate his

reasons briefly so that an aggrieved party may carry the matter further if so advised. This period of three months was considered reasonable by the apex court because after the grant of permission for building purpose the occupant is likely to spend money on starting building operations at least within a few months from the date of permission. In this case the Commissioner set aside the order of the Collector on 12.10.1961 i.e. more than a year after the order and in the view of the apex court this order was passed too late. This case was followed by this court in large number of cases.

7. There are two types of cases, one where permission is granted under Section 65 of the Code and the other where the order is passed otherwise than under Section 65 of the Code. The order before me was not passed under Section 65 of the Code; rather this order was for quashing the auction sale conducted by the Special Recovery Officer and mutation entries made pursuant to such auction. Consequently, the period of three months suggested by the apex court in this case will not apply. Still, the observation of the apex court that the revisional power under Section 211 of the Code must be exercised within a reasonable time holds good. What is reasonable time for exercising such power should depend upon the facts of each case and the nature of the order passed.

8. A Division Bench of this court in *Habib Nasir Khanji Vs. State of Gujarat* (1970) 11 G.L.R. 307 following the verdict of the apex court in *State of Gujarat Vs. Patel Raghav Natha*, (supra) observed that the powers under Section 211 must be exercised within a reasonable time.

9. The Division Bench in another case of *Bhagwanji Bawanji Vs. State of Gujarat* (1971) (12 G.L.R. 156) again took the same view that the power of revision under Section 211 of the Code must be exercised within a reasonable time. In this case the power under Section 211 of the Code was exercised after seven years. It was held that though no period of limitation is prescribed under Section 211 of the Code, this power of revision must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised. The State Government cannot keep the sword hanging on any such person in respect of his property by choosing to act and revise the order at its sweet-will which may be after seven years as it was sought to be done in this case. It

was further observed that if on the other hand any such order was passed against the appellant by the Commissioner, he would have been obliged to move the State Government for reversal, if permissible under Section 211 of the Code within three months or so at any rate he would have to file a suit within one year under Article 14 of the first Schedule of the Indian Limitation Act and cannot wait till the State Government decides anything in that matter. In other words, the Legislature has thought it proper to provide for one year as a period within which any party affected by such act or order passed by the Officer of the Government could file a suit and there is no reason why the State Government also could not do so, if it were so affected by any such order such as the order of the Commissioner under Section 211 of the Code. According to the Division Bench of this court maximum period in such case cannot be more than one year from the date of the Commissioner's order and to say that it can do so after any length of time, namely after seven years cannot be called at all as reasonable.

10. In *Rajul Co-op. Housing Society Ltd. Vs. State of Gujarat* 1985(2) GLR 1187 this court again held that the revisional power under Section 211 of the Code must be exercised within a reasonable time. Where the revisional power was exercised after about five and half years and after the petitioner had taken over possession of the land, put up construction thereon and allotted the flats to its members by recovering price of the land and cost of construction, it was held that in absence of any material on record it cannot be said that the time of five and half years taken by the Government in initiating proceedings under Section 211 of the Code was reasonable. Since the Government did not exercise the power under Section 211 within a reasonable time, the orders passed by the Collector and the State Government were set aside in this case. The case of *State of Gujarat Vs. Raghav Natha* (supra) was again followed in this case. This case is directly applicable to the facts of the case in this writ petition. Here also the power was sought to be exercised after eight years. Possession of the land was given to the petitioner immediately after auction sale. About 180 residential flats and bungalows were constructed and possession was delivered to various occupants. As such it cannot be said that the power under Section 211 of the Code was exercised in this case within a reasonable time.

11. In the case of *Evergreen Apartment Vs. Spl. Secretary* 1991(1) G.L.R. 113 again the facts were almost

similar and on identical facts this court held that though no limitation is prescribed under Section 211 of the Code the revisional power has to be exercised in a reasonable time. In this case auction sale was held by the Special Recovery Officer on 25.5.1971. 77 Members of the petitioner society contributed towards cost of the land and paid sum of Rs. 2,45,000/-. Mutation entry was made. Exemption was granted by the Competent Authority under Section 21 of the Gujarat Urban Land Ceiling and Regulation Act. Constructions were made after getting the plans sanctioned from the Municipal Corporation and the appropriate authority under the Town Planning Act. 60 Tenements were constructed and occupied by its members. In this case the auction was held on 28.4.1981 and ex-parte order on suo motu revision was passed on 21.12.1985. It was held that it was late in the day for the revenue authorities to cancel the entry made in favour of the petitioner so as to create cloud on the society's title. Such orders passed by the Collector and Additional Chief Secretary, Revenue Department, being bad were set aside as having been passed after unreasonable delay. This case also applies with full force to the facts of the case in this writ petition. Thus, on this ground alone the impugned orders cannot be sustained.

12. The next contention has been that no notice was issued by the Collector at the time of exercising suo motu powers under Section 211 of the Code. No counter affidavit has been filed repelling this contention. In the impugned order of the Collector there is no mention that any notice was issued by him to the petitioner or the occupants of the residential units and bungalows. Even if for some reason suo motu power was proposed to be exercised by the Collector under Section 211 of the Code, the principles of natural justice required that show cause notice should have been given to the persons affected by the proposed order. In the instant case, persons affected by the order were the petitioner society and also the occupants of the residential units and the bungalows. No such notice was given to them. Hence the impugned order of the Collector and consequent order of the State Government confirming the order of the Collector stand vitiated because of non-observance of the principles of natural justice.

13. The third contention that no opportunity of hearing was given to the petitioner against the proposed exercise of power under Section 211 of the Code can also be sustained in view of the findings over ground No. 2 above. There is nothing on record that even though no show cause notice was given to the petitioner, any

opportunity of hearing was given to the petitioner while exercising suo motu powers of revision. The learned A.G.P. contended that two or three adjournments were granted by the Collector but it could not be shown that those adjournments were granted on the motion of the petitioner. Consequently, it cannot be said that any opportunity of hearing was given to the petitioner against the proposed action under Section 211 of the Code. This has also vitiated the impugned order of the Collector under Section 211 of the Code.

14. The fourth contention that the persons likely to be affected by the impugned order under Section 211 of the Code were not given opportunity of hearing has also to be accepted in view of the findings on point Nos. 2 and 3. Not only that the petitioner was the person likely to be affected by the impugned order but the occupants of the residential units and bungalows were also persons likely to be affected by the impugned order. They had contributed their shares towards cost of the land and construction and thereafter constructed units were allotted to them and they are put in possession. If mutation entry was proposed to be cancelled, actually the occupants at that time were required to be heard and since no opportunity of hearing was given to them, the impugned order stands vitiated for non-observance of the principles of natural justice.

15. The next point that subsequent events were not considered by the Collector has also substance. Subsequent events highlighted were that after auction, mutation entry was made. Thereafter, possession of land was handed over to the petitioner. The petitioner applied for mutation and mutation was ordered shortly thereafter, namely on 23.5.1981. The auction was held on 18.5.1981. Thereafter, the petitioner obtained sanction to construct residential units and bungalow from the competent authority. After obtaining sanction and permission and getting the plan sanctioned, constructions were raised. Possession of residential units was handed over to respective members of the society. As many as 180 residential units were constructed. This could not have been done overnight. As such subsequent events should have been considered by the Collector. This was possible only when notice would have been given to the petitioner as well as the occupants of the residential units and bungalows. Since this was not done, the impugned order cannot be sustained.

16. Another point pressed by the learned counsel for the petitioner was that in exercise of suo motu power

under Section 211 of the Code additional evidence could not be taken by the Collector. Observation of the Division Bench of this court in Habib Nasir Khanji Vs. State (1970) 11 G.L.R. 307 was referred. In this case the Division Bench considered the distinction between Section 209 and 211 of the Code and observed that the revisional power under Section 211 does not confer on the authority power to take additional evidence. It was further held that no additional evidence can therefore be allowed under Section 211 of the Code. According to the Division Bench the scheme of Section 209 becomes clear when it is read in light of what is contained in Section 211 of the Code. Whereas Section 209 confers on the appellate authority the power of annulling, reversing, modifying and confirming the decision of order of subordinate officer and whereas it also empowers the appellate authority to direct the subordinate officer to make further investigation into the matter and / or to take additional evidence, section 211 empowers revisional authority only to modify or reverse a decision or order of a subordinate officer or proceedings instituted before him. Section 211 of the Code therefore does not confer upon the revisional authority the power to take additional evidence and is silent on the question. Therefore, the State Government had no jurisdiction to receive any additional evidence in the matter within the meaning of Section 211. It should have confined itself to the record and proceedings of the case when it examined the legality or propriety of the decision of the Collector or of the Prant Officer or examined the regularity of the proceedings either before the Collector or before the Prant Officer. It proceeded to hold that the State Government in exercising revisional power under Section 211 of the Code had no jurisdiction to receive any additional evidence and inasmuch as it received additional evidence, it acted without jurisdiction and committed an error apparent on the face of the record.

17. As mentioned above the powers of the State Government and the Collector to exercise suo motu revisional powers are contained in Section 211 of the Code. If such power is to be exercised by the Collector, he too has no jurisdiction to receive additional evidence and if additional evidence was accepted by him, his order becomes without jurisdiction and erroneous on the face of the record. The impugned orders of the Collector as well as the appellate authority indicate that additional evidence was accepted by the Collector which consisted of letter sent by the District Registrar, Co-operative Societies, Surat, dated 3.9.1989, letter of the Secretary of the Kursad Vibhag Vividh Co-op. Society dated

10.8.1989 and also a letter dated 22.9.1989 by the Additional Collector under Urban Land Ceiling Act. Reliance on these additional evidences as grounds for quashing the order of the Special Recovery Officer rendered the order of the Collector exercising revisional power under Section 211 of the Code without jurisdiction and the State Government in not interfering with such order of the Collector also acted illegally and without applying its mind to the provisions of Section 211 of the Code. As such for this reason also the two impugned orders cannot be sustained.

18. Neither the Collector nor the State Government considered that the petitioner was a bona fide purchaser for value without any notice of irregularity or illegality in the auction sale. No counter affidavit has been filed by the respondents to show that the petitioner society was aware of illegality or irregularity in the auction sale conducted by the Special Recovery Officer. If this was so then the right of the bona fide purchaser for value without notice of any irregularity or illegality in the auction sale could not be affected and altered by the impugned orders. This is also a ground for nullifying the two impugned orders.

19. Another contention has been that the reasonings for setting aside the auction sale are imaginary and non-existent. One of the reasonings is that the debt was for a small amount whereas the land auctioned was of much higher value and it was auctioned at throw away price. There is no evidence on record in the nature of exemplar or counter-affidavit that the auction sale was conducted at inadequate or wholly inadequate price. Consequently, this could not be a ground based on mere presumption that the auction sale was mala fide. Like wise the ground that the owner of the land was not the guarantor of the principal debtor was also imaginary and in any event the petitioner was not given an opportunity to show that he was unaware of any such defect in the auction sale. On this ground the order of the Special Recovery Officer could not be quashed.

20. The last ground was that the order under Section 211 of the Code is without jurisdiction because the Special Recovery Officer was also exercising the powers of the Collector and the order of the Special Recovery Officer could not be set aside by another Collector, exercising powers under Section 211 of the Code. The learned A.G.P. however contended that the Collector was specially empowered to exercise revisional jurisdiction

under Section 211 of the Code against the order of the Special Recovery Officer but no such power of delegation or its xerox copy could be filed nor any counter affidavit to this effect was filed that the Collector had delegated authority from the State Government to take suo motu revisional action under Section 211 of the Code against the orders of the Special Recovery Officer. No doubt there is presumption that official acts are done regularly in accordance with law and the person challenging the jurisdiction of a public officer is required to establish want of jurisdiction. However, on the facts of the case before me the petitioner could only challenge the jurisdiction of the Collector on the ground that he and the Special Recovery Officer both were exercising powers of Collector which fact was not disputed by the learned A.G.P. If special power of delegation was proposed to be relied upon for conferring jurisdiction on the Collector then copy should have been filed and since this was not done it can be said that the onus of proof which rested on the shoulders of the petitioner stood discharged and it could not be rebutted by the respondents inasmuch as they are allegedly in possession of power of delegation but the same has not been filed.

21. In view of the aforesaid discussions the impugned orders Annexure-A and Annexure-B to the writ petition cannot be sustained.

The writ petition therefore succeeds and is allowed. The impugned orders Annexure-A dated 23.3.1995 and Annexure-B dated 30.9.1989 are hereby quashed. No order as to costs.

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